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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.178 OF 2000

1) Suryakant @ Pappu Dnyanu Kamble)
Age 22 yrs., R/o. Mangal Ragho)
Nagar, Chandrakant Bhoiw Chawl)
Tisgaon Road, Kalyan, Dist. Thane.)

2) Raju Shamvel Aswale)
Age 27 yrs., R/o.Rokadewadi)
Baban Rokade Chawl, Tisgaon Road)
Kalyan, Dist. Thane.)

3) Kailash Vitthal Sawant)
Age 22 yrs., R/o. Dhiraj Colony)
Chawl No.4, Room No.5, Tisgaon)
Road, Kalyan, Dist. Thane).. APPELLANTS

VERSUS

1) The State of Maharashtra)
(At the instance of Kolsewadi)
Police Station, Dist. Thane))

2) Nirmal Raghunath Patil)
R/o. Tisgaon Road, Vasant Gaikwad)
Chawl No.2, Near Shivsena Office)
Kolsewadi, Kalyan, Dist.: Thane).. RESPONDENTS

Mr.A.P. Mundargi, Senior Advocate, with Mr.Niranjan Mundargi for the Appellants.

Dr.F.R. Shaikh, Additional Public Prosecutor, for Respondent No.1.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 12TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. This Appeal is directed against the judgment and order of the Additional Sessions Judge, Kalyan dated 3rd

February 2000 passed in Sessions Case No.202 of 1997. By this judgment, the Appellants have been found guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They have been sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- each.

2. The case of the prosecution is that one Vinod Patil had some enmity with the Appellants. On 2nd February 1997 at around 3.30 p.m., the Appellants attacked Vinod with knives and other weapons. As a result of this attack on him, Vinod succumbed to his injuries although he was admitted to hospital for treatment. The Appellants were arrested and charged for having murdered Vinod. The trial Court came to the conclusion that the prosecution has proved the case against the Appellants and has, therefore, found them guilty.

3. We have perused the evidence on record. We find that there is an absolute lack of evidence pointing to the guilt of the accused. Although eight witnesses have been examined by the prosecution, six of them have turned hostile. This is a classic example of the accused being set free because there is a dearth of evidence connecting him to the victim’s homicidal death.

4. The mother of the deceased, Vinod, has been examined as PW3. She has deposed that while she and her husband were watching a cricket match on the television in the afternoon of 2nd February 1997, the deceased went out of the house. Soon she heard a hue and cry outside the house and, therefore, she went out and found the Appellants assaulting her son. She claims to have noticed Appellant No.1 with a big knife (Sura). Appellant No.2 was also armed with a knife, whereas Appellant No.3 had a short edged small knife (Chaku) in his hand. She has then stated that she noticed the Appellants inflicting blows with the weapons in their hands on the left hand, chest, neck and the right thigh of her son. On seeing this incident, she raised an alarm and her husband rushed out of the house. The Appellants fled away from that spot. She and her husband immediately rushed the victim to the police station with the help of his two friends, one Subhash and Shaikh. The victim was then taken to hospital and an FIR was lodged with the police by her husband. She has stated that in all probability the Appellants assaulted her son since he had questioned Appellant No.1 about him having assaulted one Ashish who was the victim’s friend. This incident had occurred about four to eight days prior to the assault on her son. This witness has admitted that there were some criminal cases pending against her son Vinod. She has disclosed that

the arms that the Appellants carried on that day were wrongly mentioned by her when she made a statement before the police. She has then deposed about the weapons which, according to her, each of the Appellants carried on that fateful day.

5. Shaikh, whom PW3 mentioned in her deposition as the person who helped carry her son to the police station, has been examined as PW6. This witness has been declared hostile. He has not spoken having helped the victim's parents to put the victim in an autorickshaw in order to remove him to the hospital. He has only mentioned that he saw a tall, fair complexioned person assaulting the deceased with a knife and he raised a hue and cry. This led to the victim's parents coming to the spot about five to ten minutes thereafter. PW3 has stated that she went out of the house instantaneously after hearing the hue and cry and, therefore, claimed to have witnessed the entire incident. Obviously, this is an uncorroborated testimony of PW3.

6. The panch witnesses who have been examined to prove the spot panchanama, inquest panchanama have all turned hostile. Therefore, no reliance can be placed on their testimony. Each of them has stated that they were made to sign the panchanama at the police station. Even

PW5 the panch witness examined to prove the seizure of the weapons, has turned hostile and has stated that he was made to sign the panchanama in the police station itself. PW4 who is the neighbour of PW3 has also turned hostile and does not support the case made out by PW3. He denied having witnessed any incident involving the Appellants on 2nd February 1997.

7. PW7 is the Constable who registered the FIR. PW8 is the Investigation Officer. He has been examined in order to prove the spot panchanama and the panchanama in respect of seizure of the clothes of the deceased. The arrest panchanama has also been drawn by him. He claimed that on 14th February 1997, Appellant No.1 while in police custody, made a voluntary disclosure regarding the place where he had concealed the weapon used by him. According to him, Appellant No.1 led the police and the panch witnesses to a drain in a housing colony from where Appellant No.1 recovered two big knives from the drain which had filthy water flowing in it. These knives were seized. The Investigation Officer has then deposed that Appellant No.2 on 15th February 1997 expressed his desire to produce the weapon used by him and disclosed the place where it was concealed. The witness has, however, admitted that the weapon was not recovered. There is no recovery of any weapon from Appellant No.3.

8. Having scrutinised the entire evidence on record and on reappreciating it, we are unable to accept the findings of the trial Court. The recovery which the prosecution relies on does not seem to be genuine as it was made from an open drain about twelve days after the incident. In such circumstances, it would be difficult to believe that the recovery was in fact made. The panch witnesses have also turned hostile.

9. Apart from this, the reports of the Chemical Analyser do not throw any light on the question as to whether those weapons which allegedly were recovered were used for assaulting the deceased. The report of the Chemical Analyser indicates that the weapons bear human blood stains. However, the blood group has not been mentioned. The blood stains borne on all the seized articles including clothes and footwear of both the deceased as well as the Appellants could not be grouped except for the footwear and clothes of the deceased. These articles bore blood stains of "O" group. The result of the analysis of the blood of the deceased also proved to be inconclusive. Therefore, in our opinion, it is impossible to link the Appellants to the assault on the deceased.

10. The witnesses having turned hostile is also an

additional factor which must be borne in mind while considering whether the impugned judgment should be upheld. When PW3 has mentioned that two of the victim's friends helped the injured Vinod into the rickshaw, the prosecution ought to have examined the other person Subhash when PW6 was declared hostile. In our opinion, there is no material on record to link the Appellants to the assault on the victim and, therefore, the impugned judgment requires to be set aside.

11. Appeal allowed. The judgment and order dated 3rd February 2000 passed by the Additional Sessions Judge, Kalyan in Sessions Case No.202 of 1997 is set aside. The Appellants be released forthwith, if otherwise not required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)